IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 1268 of 2003

Between:

1.T.G.Suryanarayana, S/o T.G.Prahladaiah Setty,

Aged about 47 years, residing at Mahaveer Colony, Near T.G.L.V.High School,

Adoni, Kurnool District.

2. Sri B.Khaja Hussain Sab, S/o B.Rajab Sab,

Aged about 60 years, residing at H.No.21/136, Adoni, Kurnool District.

3. Sri Devisetty Prakash, S/o Saranappa, Aged about 45 years,

residing at H.No.13/47, Adoni, Kurnool District.

4. Sri K.Viswanatha Reddy, S/o K.Tirumala Reddy,

aged about 46 years, residing near State Bank of India,

Adoni, Kurnool District.

5. S.Maruthi Rao, S/o S.Narayana Rao, Aged about 44 years,

residing near Ambabhavani Temple, Adoni, Kurnool District.

6. Sri G.N.Gopal, S.o Narayanappa, Aged about 48 years,

H.No.8/278, Adoni Kurnool District.

7. T.G.Rokmangadha Gupta, S/o T.G.Viswanadha Setty,

Aged about 55 years, residing near State Bank of India,

Adoni, Kurnool District.

8. B.V.Subba Reddy, S/o B.V.Rami Reddy, Aged about 64 years,

MIG Colony, Adoni, Kurnool District.

9. B.Gopal, S/o B.Sokappa, Aged about 48 years, Ambedkar Nagar,

Adoni, Kurnool District.

10.Sri J.Ramdas, S/o J.Venkatanarasappa, Aged about 56 years,

NGOs Housing Colony, Adoni, Kurnool Districtl.

..... PETITIONERS

AND

1. Government of Andhra Pradesh, Agriculture

and Cooperation (Cooperative-IV) Department,

Secretariat, Hyderabad, rep. by Principal Secretary

to Government.

2. The Registrar of Cooperative Societies,

Government of Andhra Pradesh at Hyderabad.

3. The Joint Registrar, District, Cooperative Officer,

Kurnool District.

4. The Deputy Registrar of Cooperative Societies, Kurnool.

5. The Divisional Cooperative Officer, Kurnool.

6. The Adoni Cooperative Central Stores Limited, (Super Bazar),

Adoni, Kurnool, District, rep. by its Executive Officer.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any other appropriate writ or direction declaring the proceedings of the 4th respondent issued in Rc.No.96/2000-A dated 21-12-2002 and the proceedings of the 3rd respondent in directing to pay an amount of Rs.57,973/- towards outstanding penal interest as illegal, arbitrary and one without jurisdiction and pass such other or further orders.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondent No.: GP FOR COOPERATION

The Court made the following :

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ORDER:

Heard Sri O.Manohar Reddy, the learned Counsel for the petitioners and the learned

Government Pleader for Cooperation. The petitioners herein, who are the members of the managing committee of the respondent No.6 herein, filed this Writ Petition, inter alia, seeking Writ of Mandamus challenging the orders of the 4th respondent dated 21-12-2002 and the consequent proceedings of the 3rd respondent herein directing for paying of amount of Rs.57,973/- towards the outstanding penal interest.

The case of the petitioners in brief is that they have been duly elected as members of the managing committee of 6th respondent, which is Co-operative Society, registered under the provisions of the A.P.Cooperative Societies Act, in the election conducted on 16-10-2002 and they have been functioning as such. It was their case that on the earlier occasion the said society had obtained a loan from the 1st respondent and on the application filed by the said society seeking for waiver of the interest accrued on the said loan, having regard to the difficult financial situation and in pursuance of a resolution passed on 22-10-1998 for making request to the Government for waiver of the interest, the proposal was forwarded to 2nd respondent by the District Co-operative Officer, Kurnool and thereafter the 1st respondent passed rejecting the waiver of interest as requested. However, granted instalments for paying of the entire loan amount. Consequently, the Registrar of the Cooperative Society issued proceedings dated 21-12-2000 calling upon the said society to pay the amount in 24 instalments @Rs.9,968/- per month and stated that in the event of any default, penal interest will be charged.

It is the case of the petitioners that the entire amount has been paid without any default and in fact some of the instalments have been paid in advance even before they were due, as evident from the report of the Joint Registrar dated 31-07-2002. It is only due to the clearance of all the dues, elections were proposed and conducted and in pursuance of which the new body was elected on 16-10-2002. However, in spite of the same, the 3rd respondent issued a notice on 01-12-2002, calling upon the petitioners as to why disciplinary action should not be taken against the committee of the Stores for conducting the elections, since the interest has not been paid. The petitioners have filed the explanation to the effect that the elections were conducted in accordance with the provisions of A.P. Cooperative Societies Act and there are no arrears and therefore requested for dropping of the entire proposed action. In spite of the same, Deputy Registrar, Cooperative Societies-4th respondent herein passed the impugned order, whereby he sought to declare the said elections

of the managing committee as null and void and sought for appointment of person in charge to manage the affairs. The case of the petitioners is that having regard to the due elections conducted and which has been given effect to, the 4th respondent has no power or jurisdiction to declare the elections as null and void and further the question of appointing a person in charge also is wholly misconceived, even otherwise there is absolutely no basis for such impugned action and the same is totally beyond the scope of the powers conferred under the law. Hence, the Writ Petition.

In the counter-affidavit filed on behalf of the respondents herein the allegations as made in regard to the earlier proceedings seeking for instalements etc., are not denied. However, it is their case that the 6th respondent-society has not paid the balance interest and penal interest amount on principal amount of Rs.1,15,000/- from 01-08-1986 and the said interest has to be paid by the Stores from 01-08-1986. On the report given by the 4th respondent on 31-07-2002 stating that the loan amount has been repaid and there is outstanding of amount towards such interest, the necessary instructions have been issued for collecting the amount. Therefore, it is their case that the Society is liable to pay said penal interest. Accordingly, the show cause notice was given and after considering the explanation submitted, the orders have been rightly passed. Having regard to non-payment of the amount, the question of conducting the elections is not valid. Hence, the impugned action is sought to be sustained on the aforesaid ground.

Having considered the submissions made across the bar from both sides and also on perusal of the material, the question which falls for consideration is, as to whether the impugned action on the part of the respondents herein in seeking to set aside the elections on the ground of existence of dues towards the penal interest is valid. There is no dispute to the chequered events in respect of the affairs of the respondent No.6-Society, which had obtained the loan and having fell in arrears and sought for waiver of the interest on the principal amount, which request was ultimately rejected by the Government and providing the repayment of the entire amount in instalments. Consequently, instalments were also fixed and according to the petitioners the entire instalment amounts have been paid. There is no dispute to these facts. However, it is now the claim of the authority that the society is liable for the penal interest on the principal amount and which has remained unpaid and therefore no election could have been conducted in respect of such dues yet to be

discharged. There is also no dispute to the fact that the elections have been conducted to the said society after the payment of aforesaid instalments and the petitioners were elected as members of the managing committee and they have been functioning as such. The said election was conducted on 16-10-2002. It is only thereafter the show cause notice was given and ultimately the impugned orders were passed, though a detailed explanation has been filed by the petitioners. Under the provisions of the A.P. Cooperative Societies Act, various remedies have been contemplated in regard to every action either by the society or by any of the authorities and the hierarchy of the authorities have also been prescribed for. In regard to the correctness of any election conducted, the respondent No.4 or any authority as such has no power to interdict or in any way declare the same as void, unless and until proper recourse is taken to the remedy provided thereunder. It is not their case that there is any challenge to the said election by any of the parties including on behalf of the authorities. No election petition have been filed as contemplated under the law. Even otherwise, the existence of any arrears as such in respect of society cannot be a ground to set aside an election, which has been validly conducted. Be that as it may, the fact remains that the respondents herein themeselves took upon the power to go against the election conducted and declare the same as void, which is wholly outside the powers vested under the Act. There is also no dispute that in the event of any such arrears existing it is always open that the authorities to take appropriate steps for recovery thereof, but not to intermeddle with the body, which has been duly elected. In the circumstances, the impugned action on the part of the respondents herein in declaring the election as void is apparently without any jurisdiction.

Accordingly, the Writ Petition is allowed. The impugned orders are set-aside only to the extent of setting aside the elections of the petitioners to the managing committee. No costs.

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B.PRAKASH RAO, J.

Dated 02-08-2004.

SKMR

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the second day of August, 2004.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Principal Secretary to Government Government of Andhra Pradesh,

Agriculture and Cooperation (Cooperative-IV) Department,

Secretariat, Hyderabad,

2. The Registrar of Cooperative Societies,

Government of Andhra Pradesh at Hyderabad.

3. The Joint Registrar, District, Cooperative Officer,

Kurnool District.

4. The Deputy Registrar of Cooperative Societies, Kurnool.

5. The Divisional Cooperative Officer, Kurnool.

6. The Adoni Cooperative Central Stores Limited, (Super Bazar),

Adoni, Kurnool, District, rep. by its Executive Officer.

7. 2CCs to G.P. for Cooperation.

8. 2CD copies